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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,016	12/30/2003	John W. Hoffman	18,996	9322

23556 7590 12/06/2004

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EXAMINER	
SCHATZ, CHRISTOPHER	

ART UNIT	PAPER NUMBER
1733	

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/750,016	HOFFMAN ET AL.	
	Examiner	Art Unit	
	Christopher T Schatz	1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *1* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *10-12 and 15-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9,13 and 14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *30 December 2003* is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *21 June 2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following claims is required under 35 U.S.C. 121:

I. Claims 1-14, drawn to a method for applying an elastic member to an article web defining a pair of side edges, classified in class 156, subclass 160.

II. Claims 15-17, drawn to an apparatus for applying an elastic member to an absorbent article, classified in class 156, subclass 494.

III. Claims 18-20, drawn to a method for attaching an elastic member to an article, classified in class 156, various subclasses.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. In this case the apparatus as claimed can be used to practice another and material different process such as cutting the elastic material after said material has been zone-stretched and bonded to an absorbent web material, or cutting the elastic material without forming a line of weakness.

Because these inventions are distinct for the reasons given above and the search for Group 1 is not required for Group II and vice versa, restriction for examination purposes as indicated is proper.

Inventions I and III are related as independent inventions, each having a unique and separate means for establishing patentability. Invention I is directed to a method for applying an elastic member to a single article web, where as Invention III is directed toward a method for applying an elastic member to an article, defining a chassis width between the edges of said article, and cutting said article into a plurality of articles. As such, Invention I does not require the method detailed by Invention III, and vice versa. Therefore, the inventions are distinct and properly restrictable.

Inventions II and III are related as independent inventions, each having a unique and separate means for establishing patentability. Invention II is directed to an apparatus for applying an elastic member to a single article web, where as Invention III is directed toward a method for applying an elastic member to an article, defining a chassis width between the edges of said article, and cutting said article into a plurality of articles. As such, the method of Invention III does not require the apparatus detailed by Invention II, and vice versa. Therefore, the inventions are distinct and properly restrictable.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

2. This application contains claims directed to the following patentably distinct species of the claimed invention:

The applicant is required to select a single species from each of the following:

Species A, drawn to engaging an elastic member by holding said elastic member on a pair of wheels with vacuum.

Species B, drawn to engaging an elastic member by holding said elastic member on a pair of wheels with a pair transfer bands.

During a conversation with John L. Brodersen on November 29, 2004, an election was made with traverse, to prosecute Group I, drawn to a method for applying an elastic member to an article web defining a pair of side edges and Species A, drawn to engaging an elastic member by holding said elastic member on a pair of wheels with vacuum. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-12, and 15-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jessup '158 in view of Herrin '345. Jessup discloses an absorbent web 28, said absorbent web comprising: an elastic member 64 wherein at least a portion 90 of said elastic member is elongatable to define an elastic member width (column 1, lines 34-39); an inboard portion 90 that has been zone-stretched (column 7, lines 41-42) and an outboard side portion 88. Jessup further discloses that when said elastic member is applied to said absorbent web, the outboard portions

of said elastic member extend beyond the edges 78 of said absorbent web. Jessup does not explicitly disclose a method of making said absorbent web by using the machine and rotable wheels as claimed by applicant.

Herrin discloses a method for applying an elastic member 22 to an article web 18, said method comprising of: providing an elastic member, wherein at least a portion of the said elastic member is elongated in a cross machine direction (column 1, lines 49-52); moving said elastic member in a machine direction along an elastic member web path (column 2, lines 12-17) (Figure 6); providing a pair of rotatable wheels 68,78 in said elastic member web path, said wheels defining: a pair of inboard edges 76,86 and a pair of outboard edges opposite said inboard edges (Figure 6), an elastic entry location 92 having a width that is less than the width of the elastic member (column 2, lines 19-21); and an elastic member exit location 94 having a width that is greater than the width of the entry location (figure 6); engaging the elastic member with the pair of wheels at said elastic member entry location (column 4, lines 36-38) , wherein a portion of the elastic member is located beyond the each said inboard potion of said pair of wheels thereby defining a pair of outboard portions 22B,22C and an inboard portion of the elastic member (Figure 6); and rotating the elastic member with said pair of wheels and applying said elastic member to the article web at the elastic member exit location (column 4, lines 46-51). The method recited by Herrin is well known in the art of applying an elastic member to an absorbent web, and, since Herrin discloses the existence of both inboard and outboard portions of the elastic member during cross-machine stretching, the use of the method taught by Herrin to produce the novel, zone-stretched product taught by Jessup would have been obvious to one of

ordinary skill in the art. As to claim 13, Jessup discloses that the inboard portion of an elastic member is elongated at least 50% (column 7, lines 37-38).

5. Claims 2-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herrin in view of Jessup as applied to claim 1 above, and in further view of Ujimoto et al. Herrin and Jessup disclose a method as stated in claim 1, but the references fail to disclose a method of providing an elastic material, said method comprising: forming a line of weakness in said elastic material to define a trailing edge of the elastic material; cutting said elastic material to define a leading edge of an elastic member; and separating said elastic material at said line of weakness into discrete elastic members. Ujimoto et al. discloses a method of providing an elastic web material, said method comprising: forming a line of weakness in said elastic material to define a trailing edge of the elastic material then cutting said elastic material to define a leading edge of an elastic member (column 2, lines 1-5); and separating said elastic material at said line of weakness into discrete elastic members (column 2, lines 46-51). Cutting said elastic web material at said line of weakness is advantageous because, as disclosed by Ujimoto et al., doing so increases the speed and the economic efficiency of the production process (column 1, lines 41-53). Therefore, at the time of the invention it would have been obvious to a person of ordinary skill in the art to form a line of weakness and subsequently cut the elastic web material at said line of weakness to form discrete elastic members as taught by Ujimoto et al. above in the process of applying an elastic member to an absorbent web material as set forth above by Jessup and Herrin. As to claim 3, Ujimoto et al. discloses a method of providing an adhesive application assembly to apply an operative amount of adhesive to said elastic material web (column 2, lines 56-57). As to claim 4, Ujimoto et al. discloses a method wherein an operative amount of adhesive A is applied in a

rectilinear pattern (figure 2). As to claim 5, Ujimoto et al. discloses a method wherein an operative amount of adhesive is registered with the leading edge and the trailing edge of an elastic member (column 2, lines 56-57). Examiner interprets registered to mean that the adhesive is applied to the elastic member without leaving any space between the leading edge and the trailing edge of said elastic member. As to claim 6, Ujimoto et al. discloses a method wherein an operative amount of applied adhesive does not contact the pair of wheels (column 5, lines 63-68). As to claims 7 and 8, Jessup discloses that the bottom edge of the elastic member 64 where said member is joined to the absorbent web material (at location 84) can take on a curvilinear shape (figure 1) or a "w" shape (figure 2). While Jessup does not explicitly disclose that said bottom edge is a "trailing" edge, the bottom edge would be considered a trailing edge during the method of applying an elastic member to an absorbent web material as set forth by Herrin. The obviousness of using the method disclosed by Herrin to make the product disclosed by Jessup is explained in claim 1 above, and hence claims 7 and 8 are rendered obvious. As to claim 9, Ujimoto et al. discloses a method wherein the elastic member is held on the pair of wheels by means of a vacuum 22a, 22b, 24. The use of a vacuum to hold said elastic member to said pair of wheels is advantageous, as disclosed by Ujimoto et al., because doing so provides sufficient suction force to hold said elastic member while said elastic member is passed through the elongation system (column 5, lines 53-39). Therefore, at the time of the invention it would have been obvious to a person of ordinary skill in the art to use vacuum suction to hold said elastic member to said pair of wheels as taught by Ujimoto et al. above in the process of applying an elastic member to an absorbent web material as set forth above by Jessup and Herrin.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jessup in view of Herrin as applied to claim 1 above, and in further view of Ruscher et al. '793. Jessup and Herrin disclose a method as stated in claim 1, but the references fail to disclose a specified diameter for each wheel. Ruscher et al. discloses a method of applying an elastic member to an absorbent web material wherein the diameter of each wheel is between 0.3 and 2.0 meters (column 5, lines 1-12). Using wheels with the specified diameter range is advantageous because, as disclosed by Ruscher et al., doing so allows the absorbent web material to pass through at least one of the wheels before the elastic member is bonded to said absorbent web (column 8, lines 17-21). Therefore, at the time of the invention it would have been obvious to a person of ordinary skill in the art use wheels with said specified diameter as taught by Ruscher et al. above in the process of applying an elastic member to an absorbent web material as set forth above by Jessup and Herrin.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Vogt et al. '081, relevant to the application of an elastic member with a curvilinear pattern; Gipson et al. '860 and Blenke et al. '431, relevant to the application of an elastic member to an absorbent web wherein the outer portion of said elastic member extends beyond the edges of said absorbent web; Beadoin et al. '520 and Glaug et al. '832, relevant to the stretching of an elastic member by means of two wheels; and Gompel et al. '464 and Thomas (US-2002/0019616), relevant to the use of a absorbent undergarment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Christopher T Schatz** whose telephone number is **571-272-1456**. The examiner can normally be reached on 8:00-5:30, Monday -Thursday, 8:00-4:30 Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine Copenheaver can be reached on 571-272-1156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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